

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, Docket No. 18CR26

5 Plaintiffs, Toledo, Ohio

6 v. October 22, 2018

7 KARL J. ROGERS, JR.,

8 Defendant.

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10 TRANSCRIPT OF PRETRIAL HEARING
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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1 COURTROOM DEPUTY: Case 3:18CR25, United States
2 of America versus Karl Rogers.

3 THE COURT: Counsel, if you'll identify
4 yourselves for the record, please?

5 MS. TANGEMAN: Tracey Tangeman on behalf of the
6 government.

7 MR. WINEMAN: Good morning, Judge.

8 THE COURT: I have a vision issue, I can't
9 recognize people, I'm sorry.

10 MR. WINEMAN: That's quite all right.

11 THE COURT: And you are?

12 MR. WINEMAN: Reese Wineman, attorney for the
13 defendant, Your Honor.

14 THE COURT: Okay. And you may be seated just so
15 you can speak into the microphone.

16 MR. WINEMAN: Yes.

17 THE COURT: And I apologize, but Ms. Tangeman
18 knows, so, okay. And understanding the matter comes on for
19 anticipated change of plea, but apparently your client
20 would like to exercise his right to stand trial; is that
21 correct?

22 MR. WINEMAN: That's correct, Your Honor.

23 THE COURT: Okay. That is his right, of course.
24 How long, Ms. Tangeman, is trial going to take?

25 MS. TANGEMAN: Your Honor, I think it can be

1 concluded in a couple days.

2 THE COURT: So you don't think it's necessary for
3 me to transfer it to another judge? I mean -- I'm saying
4 that -- sir, I don't live in Toledo anymore.

5 MR. WINEMAN: Yes.

6 THE COURT: I'm what we call a helicopter judge.
7 I live in Northwestern Massachusetts, all four daughters
8 and families are out on the east coast. And two years ago
9 we followed one of them back to Williamstown. They were up
10 in Ann Arbor; however, ever since the electronic age I've
11 worked from home three or four days a week, so now I'm
12 doing it from 650 miles away instead of 15 miles away. And
13 the only bump in the road, as long as a trial can be
14 completed within about four days, that's fine. I can
15 handle that. And so -- I would think so.

16 MS. TANGEMAN: Absolutely. Yes.

17 THE COURT: I've had one of these, I think,
18 before, and that's about what it's taken. And that's
19 absolutely fine. I'm afraid not until January would be the
20 problem just because my own -- Deanna tells me that you'd
21 like perhaps 60 days and then another conference to set a
22 trial date. I would like to give you a trial date now. I
23 know my schedule until I take a summer recess the way they
24 used to in the Old King's Bench Day. I have a fall term
25 and winter term, and then I try to get away for about six,

1 eight weeks in the summer time. Still write opinions,
2 still make people unhappy, but in any event -- so let me
3 see, 60 days would basically be around mid -- mid December.

4 COURTROOM DEPUTY: It would be January 7th,
5 Judge, for the next trial date. And you have a civil date
6 and a --

7 THE COURT: We'll talk about that, but what about
8 February, Deanna? Tentative trial date for February?

9 COURTROOM DEPUTY: February 4th you also have a
10 civil trial set for that --

11 THE COURT: Those I'll transfer.

12 COURTROOM DEPUTY: It would be February 4th, so
13 you would have a magistrate do voir dire on February 4th,
14 and then start trial on Tuesday.

15 THE COURT: Have a magistrate do voir dire.
16 Tracey, what's the problem with that?

17 MS. TANGEMAN: I'm in trial the following week.

18 THE COURT: Is there somebody else who can cover
19 it? Otherwise it would be March, and I just as soon
20 have -- I mean seriously.

21 MS. TANGEMAN: I'll make it work then, it's fine.

22 THE COURT: Somebody from Cleveland even, that's
23 fine. I think Alissa tried the one I had before, I can't
24 remember. But I realize it's going to gum up things in
25 your office, but I'd appreciate it. Otherwise I'd have to

1 transfer it to another judge, and I don't want to do that.
2 They're eager to have trials. I welcome trials.

3 Sir, one thing you should understand, I took this
4 job, as all of those people and my colleagues did, because
5 we like to try cases, okay. We're not a court where you
6 should feel any apprehension or intimidation, somehow I'm
7 going to be angry at you. I'm sure your lawyer has
8 indicated to you that in the event of a conviction, you
9 will not be able to get what's called acceptance of
10 responsibility credit. Do you understand that at all what
11 I'm saying?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Okay. I mean, I'm not threatening
14 you. I'm just saying that's a built-in consequence about
15 which I can do nothing. But on the other hand, I'm not
16 going to be angry at you, okay. Feel very strongly --
17 Ms. Tangeman has heard me say this, as everyone else has in
18 this courtroom, I feel very strongly that my obligation is
19 to see to it that both sides get a fair trial. The
20 government gets a fair trial, you get a fair trial, okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And so don't -- but that is one
23 consequence if you are convicted, then the opportunity to
24 get, quote, acceptance of responsibility under the
25 sentencing guidelines is gone. I know that because once I

1 had a case long ago, attorney will understand what I'm
2 saying, as Ms. Tangeman, pre-Booker, and young man stood
3 trial 31, 32 years old, DEA prosecutor begged him to
4 cooperate. He refused to admit his involvement, the trial
5 was pretty much a lay down. Government had the King to the
6 Ace of Spades. He was convicted, and after conviction
7 counsel, in chambers just before sentencing, he finally
8 said, yeah, I guess kind of sort of maybe perhaps I did
9 something, and I found acceptance of responsibility. But
10 took Sixth Circuit Judges Daughtrey, (Inaudible) and
11 Gilman, if I wanted to pick a panel, about a
12 page-and-a-half to tell me I couldn't do that, and I'm not
13 about to try it again. But I'm sure you'll explain all
14 that to your client.

15 So my bottom line is I want you to understand I
16 don't care if you exercise the Constitutional right and go
17 to trial, or you make the decision not to go to trial.
18 That is your decision and yours alone to make. Your lawyer
19 can be telling you to do one thing, but if you want to do
20 the other thing, only you can make your mind up in that
21 regard. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. I'm going to make a change of
24 plea deadline of December -- not -- offer change of plea,
25 indicated change -- if you change your mind back, doesn't

1 matter to me, then you'll have to notify the government and
2 The Court by December 10th, and we will have a pretrial on
3 the 17th to, you know, go from there. Okay. Do you
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I'm sure your lawyer does too. He
7 can explain that to you.

8 Counsel, a couple of things. In the order today,
9 again, Ms. Tangeman is familiar with this, there'll be
10 several things. One, that if the parties consent -- and
11 let me ask you this. If you can let me know on the -- on
12 the 17th if you do -- if you and your client do consent to
13 the magistrate presiding voir dire. Candidly, it's a
14 convenience to The Court. As you may or may not know, the
15 lawyers do voir dire in this district -- in this division,
16 one of the probably three or four federal courts in the
17 country where the lawyers do the voir dire instead of the
18 courts. We all agree up in a state system where that's
19 common place, that's the way it works, and that's the way
20 all committed to having it done. It's your case, not our
21 case. But when I was Magistrate Judge for 15 years, I
22 picked a lot of juries. If not, you have a right to have
23 me preside at voir dire, the jury selection, or if you
24 agree and government agrees, our Magistrate Judge can
25 preside at voir dire. Once again, I get paid no matter

1 what I do. So if you want me to preside at voir dire,
2 that's fine. Okay. You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The -- any motions in limine will be
5 due not later than two weeks before trial, and then the
6 opposition will be due one week before trial. I try to
7 decide those before trial so everybody knows what's in and
8 what's out in that regard. And I welcome any -- certainly
9 any substantive or substantial issue by way of motion in
10 limine that you see. The earlier you get it to me, the
11 better. That's fine with me, just so I can get it decided,
12 especially if there's a Daubert issue. If there's some
13 sort of computer forensic expert that either of you have --
14 have decided to retain. I think I'm going to make expert
15 reports, if any, due by the 17th. Let's do this, expert
16 reports, if any, will be due by December 1st. Motions in
17 limine will be due by -- I'm just trying to think. I'll
18 make it due by December 10th, pretrial on the 17th. I'll
19 give you a fairly brisk briefing schedule, then if there
20 are any such motions. The parties to exchange witness
21 lists two weeks before trial and propose jury instructions
22 to be submitted before trial. Government has a set of the
23 instructions that I've given in the past. All I need from
24 counsel is the core instruction on the elements of the --
25 the government's burden of proof of the charge and the

1 elements of any defense. I've got what I call wrap around,
2 which is standard, you know, what evidence is, don't be
3 looking at social media. Keep an open mind and so forth
4 instructions. Ms. Tangeman, is there anything else that I
5 do by way of pretrial order, or Deanna?

6 MS. TANGEMAN: Well, Your Honor, just for
7 clarification, what time on December 17th are we doing that
8 final pretrial?

9 COURTROOM DEPUTY: 9:30.

10 THE COURT: And counsel, that can be by telephone
11 if you wish. You are from?

12 MR. WINEMAN: Norwalk, Your Honor.

13 THE COURT: Okay.

14 MS. TANGEMAN: And then, Your Honor, what day are
15 the joint proposed instructions due?

16 THE COURT: Just two weeks before trial if you
17 would. And counsel, candidly, I'm likely to give whatever
18 the government's had us give here before. You're obviously
19 welcome to make an objection -- I'm not -- it's not an iron
20 bound thing, but it's just, you know, seems to work so far.

21 Is there a pattern, Tracey, Sixth Circuit pattern
22 on that?

23 MS. TANGEMAN: I believe so, yes.

24 THE COURT: By default of course is the Sixth
25 Circuit pattern. They tell me it's okay, I'm going to give

1 it no matter how bad it may be. Anything else, Tracey,
2 that I usually --

3 MS. TANGEMAN: I think just the JERS exhibits,
4 and those are typically due the week before trial.

5 THE COURT: Yeah, the exhibits you can exchange a
6 week before trial, let's make it two weeks before trial,
7 Tracey, if that's okay.

8 MS. TANGEMAN: Yes.

9 THE COURT: Just mark and exchange any exhibits,
10 okay. Anything else from the government?

11 MS. TANGEMAN: No, Your Honor. Thank you.

12 THE COURT: Counsel, anything else?

13 MR. WINEMAN: No, Your Honor. Thank you.

14 THE COURT: You are aware, I assume, that my
15 predecessor Judge Young was a fifth generation lawyer in
16 the Fireland's of Norwalk --

17 MR. WINEMAN: Yes, that's correct.

18 THE COURT: I don't know if his name is still
19 revered over there as it is in this courthouse and among
20 the lawyers who used to appear in front of him. Wonderful,
21 great man.

22 MR. WINEMAN: Great man.

23 THE COURT: He was. His engagement present to
24 his wife was a harpsichord, one of two that he built in his
25 lifetime.

1 MR. WINEMAN: Yeah, I had heard that.

2 THE COURT: Pardon?

3 MR. WINEMAN: I had heard that from Henry, his
4 cousin.

5 THE COURT: And he knew every word to every
6 Gilbert and Sullivan -- and he knew the chemical
7 composition of every piece of candy in his jar. True
8 Renaissance man and wonderful judge. Very proud of his
9 heritage. His family is one of the original settlers in
10 the Fireland's.

11 MR. WINEMAN: That's right.

12 THE COURT: Okay. And his son, I'll tell you one
13 more quick story. That portrait, there was a match pair of
14 Mrs. Young, lovely woman, and The Judge in their house in
15 Huron, and he had -- my family and myself out two or three
16 times during the holidays. He had an electric train set
17 from about 1910, electric bulbs on the trees that were
18 family, and I remember seeing that portrait. And after he
19 had passed away and I became a District Judge, I wanted to
20 have that -- a copy made to hang where it does, so he looks
21 at us. He winks every now and then, and every now and then
22 he shakes his head, but nobody else can see that but us.
23 So anyway, after he passed away I called his son,
24 unfortunately he died quite young, and asked him if I could
25 have that portrait to have a copy made of it. He said

1 fine. Well, in 19 -- in 2012 or so, I was about, I had --
2 I was in my then chambers, I had a bunch of posters that I
3 had up in the jury room that another judge took down about
4 the American Trial Lawyers Association, about the
5 significance of your right to trial by jury, and portraits
6 of the Jefferson and the people, you know, who had said how
7 important jury -- I'm going through that and I find the
8 original portrait of Judge Young. Nobody had called. A
9 couple of weeks later, I'm in Laredo, Texas, going to
10 border court sentencings in immigration cases, drug cases,
11 the young AUSA is D.J. Young, and that's what they used to
12 call his grandson, D.J., they were all Don, Don J., not
13 Donald. He'd get very upset when The Blade would refer to
14 Donald Young. I said, Mr. Young, come over, was your
15 grandfather a U.S. District judge in Toledo. He said yes.
16 I told him about that portrait. I said, I know your dad
17 passed away, nobody called. I'd like to get ahold of your
18 mother. He said, well, Judge we're coming up in the
19 summer, he and his family came up in the summer, so I was
20 able finally -- and also tell him and his grandchildren
21 about people who remember, generation -- generation older
22 or two than they about his grandfather and great
23 grandfather. All coincidence. But you can imagine how far
24 beneath my shoes my heart had sunk when I saw that.
25 Anyway, he's smiling right now, by the way. Okay. Enough

1 of the history. Anything further for government,
2 Ms. Tangeman?

3 MS. TANGEMAN: No, Your Honor. Thank you.

4 THE COURT: Counsel, anything further?

5 MR. WINEMAN: Gives me something to take back to
6 Norwalk, though.

7 THE COURT: Counsel, I assume you're retained,
8 but if funds get tight, I have absolutely no problem of
9 appointing you under CJA, especially if you need to retain
10 an expert or whatever. Just talk to Deanna.

11 MR. WINEMAN: Yes.

12 THE COURT: It's not my money, it's your money.
13 Okay.

14 MR. WINEMAN: Thank you.

15 THE COURT: See you in December.

16 - - -

17 C E R T I F I C A T E

18

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

21

22 s:/Angela D. Nixon November 25, 2020

23 -----

24 Angela D. Nixon, RMR, CRR Date

25